

II. Rejection under 35 U.S.C. § 102(e)

The Examiner rejected claims 1-15 under 35 U.S.C. § 102(e) as being anticipated by Kawano et al. (Patent Application Publication No. US 2002/0123011 for U.S. Patent Application No. 10/026,419) ("*Kawano*") for reasons given at pages 2 and 3 of the outstanding Office Action. Applicants respectfully disagree for at least the following reason.

Kawano is not available as a prior art reference under § 102(e). Under § 102(e), a patent application filed and published in the U.S. can serve as a § 102 prior art reference only if its U.S. filing date is earlier than the earliest effective filing date of a U.S. patent application at issue. Here, *Kawano* is a published patent application, which has a U.S. filing date of December 26, 2001. The present application was filed on February 15, 2002, but claimed priority based on Japanese Application No. 2001-040618, filed February 16, 2001. Transmittal Letter dated February 15, 2002, page 2. (In addition, a certified copy of Japanese Application No. 2001-040618, filed February 16, 2001, was submitted on February 15, 2002.) Therefore, the present application is entitled to a priority date of February 16, 2001, which is prior to *Kawano*'s U.S. filing date, December 26, 2001. Accordingly, *Kawano* is not available as prior art reference under § 102(e), and cannot be used for a proper § 102(e) rejection.

Applicants respectfully request this rejection be withdrawn.

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III. Double Patenting Rejection

The Examiner provisionally rejected claims 1-5 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 16-85 of copending Application No. 10/026,419. Office Action, page 4.

Applicants do not agree with the rejection, because, at least, as discussed above, the copending Application No. 10/026, 419 is not a valid § 102(e) prior art reference, therefore, cannot serve as a prior art reference even on a "provisional" double patenting basis. Furthermore, as tacitly recognized by the Examiner, since the copending Application No. 10/026, 419 is not yet issued as a patent, there is no basis at this time to make such a rejection.

Accordingly, Applicants respectfully request this rejection be withdrawn.

IV. Conclusion

In view of the foregoing remarks, Applicants respectfully request the reconsideration and reexamination of this application, and the timely allowance of the pending claims.

If the Examiner believes a telephone conference could be useful in resolving the outstanding issue, she is respectfully urged to contact Applicants' undersigned representative at 202-408-4218.

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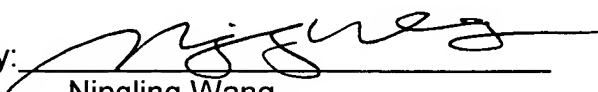
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If there is any additional fee due in connection with the filing of this Reply, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

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Dated: January 20, 2004

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